

and individual interest. It is for the equal interest of each member of the tribe that this suit should be prosecuted, and I do not think it unreasonable to hold that the use of the tribal funds for the purpose of prosecuting a suit for the protection of the tribal estate is a substantial and practical distribution of said funds per capita. The case is analogous to that of an executor under a will who would be allowed to use a portion of an undivided estate for the protection of the undivided interests of the legatees.

I have to advise you that such Delaware moneys as are unquestionably *tribal funds*, as distinguished from *individual funds*, may be used, in your discretion, and with the consent of the tribe expressed in the usual manner, for the purpose of defraying the expenses of prosecuting the above-mentioned suit in the Court of Claims.

It is impracticable for me at the present time to determine just what tribal funds are now available for the purpose above indicated. For your information I will say that my attention has been called to the fact that the records of this Department show the payment of the following claim:

"Sally Honeywell ..... \$1,555.50,  
Paid September 9, 1892, certificate No. 7653, from fulfilling treaty with Delawares (stolen stock)."

It is asserted that certain individual claims were paid from tribal funds instead of individual funds, which alone were properly chargeable with the same. If this is found to be the fact, it would seem to be proper that the tribal funds should be reimbursed accordingly.

#### USE OF AN APPROPRIATION FOR A FISH-CULTURAL STATION.

Under the act of July 1, 1898, which provides that no expenditure of the money therein appropriated for the establishment of a fish-cultural station shall be made until the site therefor "shall be donated to the Government," an expenditure for the purchase of buildings erected on lands included in the forest reservation in the State of Washington is not authorized.

(Comptroller Tracewell to the Commissioner of Fish and Fisheries, April 11, 1899.)

I have received your letter of the 7th instant, as follows:

"I have the honor to state that the act of Congress approved July 1, 1898, appropriating \$10,000 for the establishment of a

fish-cultural station in the State of Washington, provides that the site for the same, to be selected by the Commissioner of Fish and Fisheries, 'shall be donated to the Government for the purpose of the said station before any expenditures hereunder.' After a careful examination of the various sites in the State, I am desirous of locating the station on Baker Lake, which is included in the forest reservation in the State of Washington under the jurisdiction of the Department of the Interior. I also desire to purchase from the State of Washington the buildings erected by the State fish commission on this land, and used for fish-cultural purposes since 1896. The legislature of the State has recently passed an act authorizing the sale of these buildings to the United States Government. Please advise me whether under the provisions of the act of Congress referred to I would be authorized to pay for these buildings and outfit from this appropriation."

The appropriation to which you refer is made in the following terms:

"For the establishment of a fish-cultural station in the State of Washington for the propagation of salmon and other fishes and construction and equipment of station, ten thousand dollars: *Provided*, That the site for the same, to be selected by the Commissioner of Fish and Fisheries, shall be donated to the Government for the purpose of the said station before any expenditure hereunder." (30 Stat., 612.)

The primary object of the proviso is of course to secure a site free of cost to the Government, and while that object would, in a sense, be accomplished by establishing a station on land already owned by the Government, it might well be held that, under the transaction suggested by you, the Government does pay for the site by just the value of the land which it does not secure by donation, to say nothing of the value for other possible use of the public land thus diverted to this use.

In this view of the case, I do not see my way clear to make any construction which would vary the plain language of the proviso, which is that "the site for the same \* \* \* shall be donated to the Government before any expenditure [is made] hereunder," showing, as it does, an intention on the part of Congress to receive from the State of Washington, or from some corporation or citizen therein, a consideration for the Government's share in the transaction.

The question you submit is a specific one, namely, whether you are authorized to pay for certain buildings and outfit from the appropriation, and as it involves a payment to be made under you, section 8 of the act of July 31, 1894 (28 Stat., 208),

would seem to require an answer from me, which I have given as above. There is, however, another view to be taken of the case. Back of the question of the expenditure of the money is that of the acquisition of the site. This involves questions of law unconnected with any expenditure of public moneys, and hence not within my jurisdiction, so that what I have said in regard to the same can not be regarded as authoritative, but merely as suggestive of my reasons for disapproving at the present time, and without further information, the use of any part of the appropriation. If the site were acquired by donation, as contemplated in the act, section 355 of the Revised Statutes would require the opinion of the Attorney-General in favor of the validity of the title before any money could be expended thereon. If, on the other hand, it be taken from a part of the forest reservation, as contemplated by you, questions of its cession to the Fish Commission, which belong to the Department of the Interior, would arise. These are underlying questions which I can not decide, but which should be settled before any question of payment can be finally disposed of.

I would therefore respectfully suggest that this decision be considered merely as disapproving the payment you wish to make until you shall have obtained from the Attorney-General an advisory opinion upon the primary question involved in the acquisition of the site—whether the act, to be effective, requires an actual donation of the site, or whether the use of a part of the forest reservation would be a substantial compliance with its terms.

#### EXTRA PAY TO PAYMASTERS' CLERKS EMPLOYED WITH THE TEMPORARY FORCE OF THE NAVY.

Paymasters' clerks of the Navy are officers within the meaning of the act of March 3, 1899, granting extra pay on discharge to officers and enlisted men comprising the temporary force of the Navy during the war with Spain, but only such are entitled to extra pay as were appointed for service with officers in the temporary force or with retired paymasters detailed for active duty during the war.

*(Decision by Assistant Comptroller Mitchell, April 11, 1899.)*

The Auditor for the Navy Department, under date of March 31, 1899, has submitted the following original construction of the clause in the general deficiency act of March 3, 1899 (Pub-